

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to amend the rule cited as 10A NCAC 27G .0813.

Proposed Effective Date: April 1, 2007

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rule by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by October 17, 2006.*

Reason for Proposed Action:

10A NCAC 27G .0813- *The proposed amendment is necessary to update information concerning the appeals process for denial of a request to waive a licensure rule and reflect the contested case requirements in accordance with G.S. 150B, Article 3. The proposed amendment changes the language to bring the rules into compliance with the statute.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Comments may be submitted to: *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email Cindy.Kornegay@ncmail.net*

Comment period ends: December 1, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantive ($\geq \$3,000,000$)
- ☒ None

CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0800 - WAIVERS AND APPEALS

10A NCAC 27G .0813 WAIVER OF LICENSURE RULES

(a) The Director of DFS may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on, but not limited to, the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of clients;
- (4) the existence of good cause; and
- (5) documentation of area board governing body approval when requests are from area programs, an area authority or county program and contract agencies of area programs, an area authority or county program, or documentation of governing body approval when requests are from private facilities not contracting with area programs, an area authority or county program.

(b) Requests for waivers shall be sent to the Director, Division of Facility Services, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;
- (3) the rule number and title of the rule or requirements for which waiver is being sought;

- (4) a statement of facts showing:
 - (A) reason for, and the nature and extent of, the request; and
 - (B) that the health, safety or welfare of clients will not be threatened.
- (5) documentation of ~~area board governing body~~ approval when requests are from ~~area programs~~ an area authority or county program and contract agencies of ~~area programs~~ area/county programs, or documentation of governing ~~board body~~ approval when requests are from private facilities not contracting with ~~area programs~~ an area authority or county program.
- (d) Prior to issuing a decision on the waiver request, the Director of DFS shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.
- (e) A decision regarding the waiver request shall be issued in writing by the Director of DFS and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.
- (f) The decision of the Director of DFS regarding a waiver request may be appealed to the ~~Commission~~ Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. 10A NCAC 26A-0200. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.
- (g) Waivers shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147.